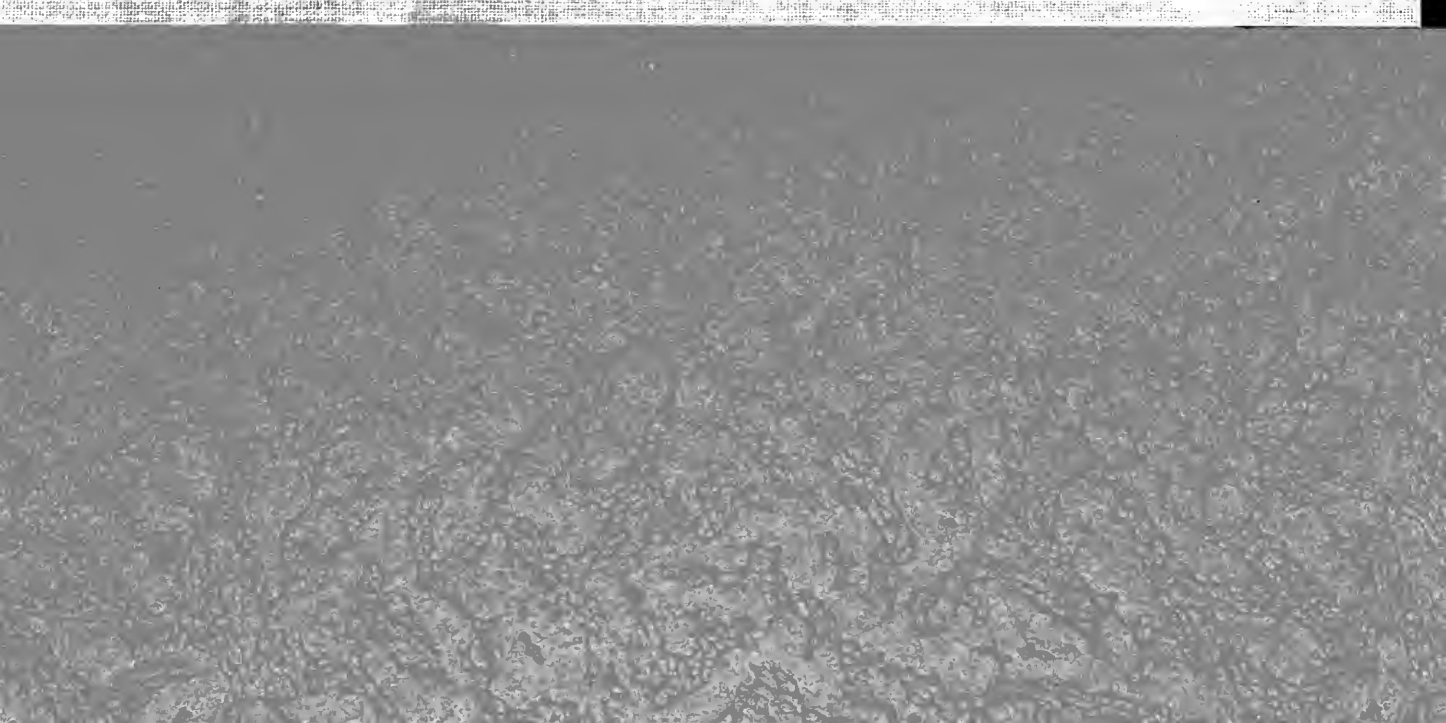

THE ORGAN IN THE SYNAGOGUE.

An Interesting Chapter in the History of REFORM JUDAISM In America.

By Rabbi Barnett A. Elzas.

Not once alone in recent years have the Courts been invoked to settle disputes of a purely religious character. In this respect, too, history has a curious way of repeating itself. The accidental stumbling across an old volume of South Carolina Law Reports has furnished me with a full account of what was, without doubt, the ablest and most hotly contested case of the kind on record. It is one of the landmarks in the history of Reform Judaism in America, and is to be found in Richardson's South Carolina Law Reports, Vol 2, pp 245-286: The State vs Ancker.

The spirit of progress was first manifested in the Synagogue of Charleston in 1824, when the "Society of Reformed Israelites" was organized. The distinguished Isaac Harby, one of its leading spirits, and whose Anniversary Address, in 1825, has come down to us, had removed to New York in 1828. His loss must have been severely felt, but the movement he had helped to inaugurate continued till about 1839 or 1840, when it came to an end, its members reaffiliating with the old congregation, Beth Elohim.

The old Synagogue had been destroyed by the great fire of 1838. It is interesting to note that amongst the many things I recently discovered is a large oil painting, at the back of which is this inscription: "Interior of K. K. B. E., of Charleston, S. C., destroyed by the great fire of April, 1838, painted from recollection and dedicated to the members of that congregation by Solomon N. Carvalho." This Synagogue—the one that is still used by Beth Elohim—was rebuilt in 1840. As just mentioned, considerable accession to its membership was made by the reaffiliation of the members of the "Society of Reformed Israelites." Though this Society had now ceased to exist, its spirit was still alive. The time seemed favorable, and a move was made to introduce an organ into the Synagogue as an accessory to worship. This was the first organ ever introduced into a Jewish place of worship in America. This innovation, however, was stoutly resisted by many of the older members, but the progressive party, being now in the majority, carried the day. The minority withdrew and worshipped elsewhere, and in 1844 carried the case to the Courts. The case was argued before Judge Wardlaw in 1845, the most brilliant legal talent of the day being arrayed on either side, King & Memminger for the appellants, and Petigru & Bailey, contra. The dominant party gained the verdict, which was affirmed when the case reached the Court of Errors and Appeals in 1846. The opinion was delivered by Judge Butler and is a magnificent document. One marvels at the acumen therein displayed. Though the question of the organ is no longer a living question with us, there are questions of principle involved on which the Court passed, which questions are of perennial interest. I therefore reproduce part of

the opinion. It is worthy of careful study, even at this late day:

"It is almost impossible to reduce matters growing out of a difference of opinion to such a definite form as to subject them to judicial cognizance. Rights and franchises are such matters as have legal existence and may be protected by law. Speculative disputes must be left, in some measure, to the arbitrament of opinion. To suppose that an uninterrupted harmony of sentiment can be preserved under the guarantee of written laws and constitutions, or by the application of judicial authority, would be to make a calculation that has been refuted by the history of all institutions like that before us. Neither is it practical to frame laws in such a way as to make them, by their arbitrary and controlling influence, preserve, in perpetuity, the primitive identity of social and religious institutions.

"The granite promontory in the deep may stand firm and unchanged amidst the waves and storms that beat upon it, but human institutions cannot withstand the agitations of free, active and progressive opinion. Whilst laws are stationary, things are progressive. Any system of laws that should be made without the principle of expansibility, that would, in some measure, accommodate them to the progression of events, would have within it the seeds of mischief and violence. When the great Spartan law-giver gave his countrymen laws, with an injunction never to change them, he was a great violator of law himself. For all laws, however wise, cannot be subjected to Procrustean limitations. Cesante ratione cessat lex is a profound and philosophical principle of the law. These remarks are more particularly true in reference to matters of taste and form. Let the old-

est member of any civil or religious corporation look back and see, if he can, in any instance, trace the original identity of his institution throughout its entire history. Those who now, in the case before us, insist with most earnestness on a severe observance of ancient rites and forms would hardly recognize or understand the same, as they were practiced by their remote ancestors, who founded the Synagogue. The Minhag Sephardm was a ritual of Spanish origin; and, although it may yet obtain in different countries, yet how differently is it observed. If two Jewish congregations, one from Poland and the other from Spain, were to be brought together, whilst professing to be governed by the same rituals, they would probably find themselves unable to understand each other in their observances of them.

"The Jews in every part of the world, by whatever forms they may be governed, could, no doubt, recognize the general spirit and prevailing principles of their religion to be essentially the same. But in mere form a resemblance could not be traced with anything like tolerable uniformity.

"As practiced and observed in Charleston in 1784, and for many years afterwards, exercises in Spanish were connected with it. They have been long since discontinued; long before the commencement of this controversy. Religious rituals merely, not involving always essential principles of faith, will be modified to some extent by the influence of the political institutions of the countries in which they are practiced. In a despotism, where toleration is a sin to the prevailing religion, religious exercises will be conducted in secret or in occult forms. Faith and doctrine may take refuge in these for safety.

On the contrary, in a country where toleration is not only allowed, but where perfect freedom of conscience is guaranteed by constitutional provision, such devices will not be resorted to. Language itself is continually undergoing changes; clumsy expressions of rude language will give way to modern refinement. There are those in every church who would be shocked at the change of expression in respect to the tablets or books that contain the prayers and more solemn forms of religious rituals. At this time there are many who oppose any change of style in the editions of the Bible. It is not surprising that those who have been accustomed to one form of expression should have associations with it that they could not have with another. And it is so of all religious forms and ceremonies. The feelings of such persons should never be treated with indifference or rudeness. They deserve respect and are to be regarded as useful checks on reckless innovation. Matters of this kind must necessarily belong, and should be committed, to the jurisdiction of the body that has the right of conducting the religious concerns of ecclesiastical corporations. Charters are granted to such corporations, upon the ground that they can carry out their ends with greater efficiency than if they were left to individual exertions and the operation of the general laws of the land. The parties before us who are opposed to reform contend that dangerous changes have been made in the form of their worship, particularly as it respects the introduction of instrumental music. It is not pretended but that the organ, the instrument complained of was introduced by the constituted authorities; but the ground taken is, that this authority has been exercised to do that which is against the provisions

of the charter, which guarantees that the Minhag Sephardim should be a ritual of the congregation, and that it did not allow of instrumental music as a part of it. The objection is to the mere form in which the music is used and practiced in this congregation. I suppose it might be admitted that in its origin such a ritual was practiced without the aid of instrumental accompaniment, but to suppose that the exact kind of music that was to be used in all former time had been fixed and agreed upon by the Jewish worshippers who obtained this charter would be to attribute to them an impracticable undertaking. That such music was not used is certain; but that it might not in the progress of human events be adopted would be an attempt to anticipate the decision of posterity on matters that must be affected by the progress of art and the general tone of society, and which could not be controlled by arbitrary limitation. As this was a subject that could not be well reached, much less continually controlled by the judgment of this Court, we think the Judge below very properly excluded all evidence in relation to it.

"Evidence was offered on a graver subject, touching the faith and religious professions of the majority that introduced and established the organ. It might be sufficient to say that the party which has been charged with heterodoxy in this respect profess to adhere to the ancient faith of the Jews. They do not occupy the position of those who openly disavow the faith of the founders of the synagogue. If they were to do so, it would be time for the Court to say how far it would take cognizance of the rights of the minority under the terms of their charter. How can a Court ascertain the faith of others except by their professions? Can it be done by the opinions of others, and if so,

by whose opinions? It is said that no two eyes can see exactly at the same distance, and, perhaps, no two minds have exactly the same conceptions of the same subjects, particularly of matters of faith and orthodoxy. The unexpressed sentiments of the human mind are hard to be found out, and it is a delicate office to assume a jurisdiction over its operations when they are to be reached by the opinions of others or conjectural inference. Expressions and acts may give tolerable information, upon which the judgment may act and determine.

"In this case suppose the Judge below had opened the inquiry as to the faith and doctrines of the dominant party, where would he have looked for information? Surely not to the minority or any others who might occupy an adversary position. Could he have trusted to the testimony that might have been procured and given from other sects and denominations of Jews in other countries? And if so should he have consulted those who live in Palestine, in Germany, in England or in the United States? He might have assumed the power to do this, but it would have been a wilderness of power with scarcely a compass to guide him. It would have been to go into the labyrinth of curious and recondite learning, without a clue by which he could escape from its bewildering perplexities. He would have had another difficulty, that is, to determine whose testimony he would have taken, for both parties, no doubt, had ready and able advocates for their respective doctrines. It seems to me it would have been hard for a civil magistrate to give a definite, much less a satisfactory, judgment on such subjects. We, therefore, concur in the propriety of the course pursued by the Judge below in respect to these matters. If the Court can be called upon to

settle by its decision such disputes it would be bound to require parties to conform to its standard of faith—a judicial standard for theological orthodoxy!" (Pp 270-274.)

Times have changed since then, and even conservative congregations now have the organ in their places of worship. We take everything as a matter of course nowadays, and are too apt to forget the cost at which our privileges were bought by our forefathers. Amongst the precious relics of the battles for religious progress that have been waged, let us ever cherish the memory of the brave struggle of the Jews of Charleston in 1840.